

ETHAN D. THOMAS
Bar No. 12874
ANDREW S. CLARK
Bar No. 14854
LITTLER MENDELSON, P.C.
3960 Howard Hughes Parkway
Suite 300
Las Vegas, Nevada 89169.5937
Telephone: 702.862.8800
Fax No.: 702.862.8811
Email: edthomas@littler.com
Email: asclark@littler.com

Attorneys for Defendant
CAREMARK, L.L.C.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHELE DANISE MILLER,

Plaintiff,

V.

LONG DRUGS DBA CVS HEALTH, et al..

Defendant

Case No. 2:22-cv-01150-JAD-VCF

**STIPULATION AND [PROPOSED]
ORDER TO EXTEND TIME FOR
DEFENDANT TO FILE RESPONSE TO
PLAINTIFF'S AMENDED
COMPLAINT**

[FIRST REQUEST]

Plaintiff, Michelle Danise Miller ("Ms. Miller"), and Defendant, Caremark, L.L.C. (incorrectly named in the Amended Complaint as Long Drugs DBA CVS Health) (hereinafter referred to as "Defendant"), by and through their respective counsel of record, hereby agree and stipulate to extend the time for Defendant to file a response to the Amended Complaint up to and including **April 19, 2023**.

On or about February 18, 2023, Ms. Miller mailed to Defendant a package that included a copy of her Amended Complaint, a Notice of Lawsuit and Request to Waive Service of a Summons, and a Waiver of the Service of Summons form. On March 13, 2023, and before Defendant became aware that the Court appointed pro bono counsel for Ms. Miller, Defendant's counsel signed and retuned to Ms. Miller a Waiver of the Service of Summons. The waiver and accompanying email to Ms. Miller is attached as **Exhibit 1**. Having signed and returned the Waiver, Defendant expected

1 a sixty-day window to respond to the Amended Complaint, which would expire on April 19, 2023.

2 It was recently discovered that on March 10, 2023, Plaintiff filed a returned certificate of
 3 service which indicated that the operative Amended Complaint had purportedly been personally
 4 served on an agent for service of process for Defendant. [ECF No. 16]. For various reasons,
 5 Defendant disputes that service was proper and effective as indicated in the Proof of Service filed
 6 on March 10, 2023. To clarify the record and resolve any confusion related to these issues, the
 7 parties now stipulate and agree that Defendant's deadline to respond to the Amended Complaint
 8 [ECF No. 6] shall be April 19, 2023.

9 The instant stipulation merely reflects the responsive-pleading deadline in the Waiver of
 10 Service returned to Plaintiff by Defendant's counsel. Had service been correct and effective as
 11 indicated in the Return of Service filed by Plaintiff on March 10, 2023, the deadline would have
 12 been March 29, 2022. While Defendant disputes that the deadline to respond to the Complaint has
 13 expired, even if it had, the parties agree and stipulate that excusable neglect can be established by
 14 the above referenced information and that good cause exists to extend the deadline in question. *See*
 15 LR IA 6-1(a). Further, the requested stipulation clarifies the record and the extension will allow
 16 Defendant's counsel to sufficiently investigate Ms. Miller's claims and prepare a sufficient
 17 response to the Amended Complaint. To this end, Defendant will not be disputing the efficacy of
 18 service of process.

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1 This is the first request for an extension of time to respond to the Amended Complaint and
2 is made in good faith and not for purposes of delay.

3 Dated: April 4, 2023

Dated: April 4, 2023

5 Respectfully submitted,

6 */s/ Tye S. Hanseen*

7 Tye S. Hanseen, Esq.
Nicholas Crosby, Esq.
Reagan Weber, Esq.
William Reese Levins, Esq.
MARQUIS AURBACH

10 Attorneys for Plaintiff,
MICHELE DANISE MILLER

Respectfully submitted,

6 */s/ Andrew S. Clark*

Ethan D. Thomas, Esq.
Andrew S. Clark, Esq.
LITTLER MENDELSON, P.C.

7 Attorneys for Defendant,
CAREMARK, L.L.C.

13 **IT IS SO ORDERED.**

14 Dated: 4-7-2023



15 UNITED STATES MAGISTRATE JUDGE

1 **INDEX OF EXHIBITS**
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Exhibit 1 March 13, 2023 e-mail attaching Waiver of Service

4876-7201-2634.1 / 090142-1424

EXHIBIT 1

MARCH 13, 2023 EMAIL ATTACHING WAIVER OF SERVICE

EXHIBIT 1

MARCH 13, 2023 EMAIL ATTACHING WAIVER OF SERVICE

From: Reed, Todd M.
Sent: Monday, March 13, 2023 8:30 AM
To: mmiller143@hotmail.com
Subject: Miller v. Longs Drugs
Attachments: Scanned from a Xerox Multifunction Printer.pdf

Good morning, Ms. Miller. My firm and I are counsel to CVS Health and will be representing the defendant in the lawsuit referenced above that you filed in federal court in Nevada.

I am in receipt of the Amended Complaint and the Notice of Lawsuit and Request for Waiver of Service of a Summons that you sent to my client on February 18, 2023. Attached please find the Waiver of the Service of Summons that I have signed on behalf of my client. I understand that my client's response to your Amended Complaint must be filed within 60 days of February 18, 2023, which is April 19, 2023 (not April 18, 2023, as you had typed onto the waiver form). You will see that I have corrected the date on the waiver form.

Thank you.

Todd Reed
Attorney at Law
401.824.2504 direct, 401.223.6408 fax
TReed@littler.com



Labor & Employment Law Solutions | Local Everywhere
One Financial Plaza, Suite 2205, Providence, RI 02903

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT
for the
District of Nevada

| | | |
|---|---|--|
| <u>Michele D Miller</u> Plaintiff v. <u>Long Drugs of California LLC, DBA CVS Health et.al.</u> Defendant | } | Civil Action No. 2:22-CV-01150-JAD-VCF |
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WAIVER OF THE SERVICE OF SUMMONS

To: Michele D Miller
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 04/10/2023 - 4/19/23, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 3/13/23

Long Drugs of California LLC
Printed name of party waiving service of summons

Todd Reed

Signature of the attorney or unrepresented party

Todd Reed c/o Littler Mendelson P.C.

Printed name

One Financial Plaza, Suite 2205
Providence RI 02903

Address

treed@littler.com

E-mail address

401-824-2504

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.